

BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of     )  
FOURCO GLASS COMPANY                )

Appearances:

For Appellant:     John Wiseman, Certified Public  
  Accountant

For Respondent:    Burl D. Lack, Chief Counsel;  
  Crawford H. Thomas, Associate Tax  
  Counsel

O P I N I O N

This appeal is made pursuant to Section 2607'7 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claims of Fourco Glass Company for refund of corporation income tax in the amounts of \$135.72, \$295.27, \$1,034.26, \$208.27, \$712.12 and \$604.83 for the fiscal years ended June 30, 1949, 1950, 1951, 1952, 1953 and 1954, respectively.

Appellant is a West Virginia corporation engaged in selling the products of Harding Glass Company (hereafter referred to as Harding) and other glass manufacturers. Appellant is sole owner of the capital stock of Harding. Both corporations have the same president and treasurer. Appellant sells all of Harding's products and receives commissions on the sales. Appellant employs one salesman in California who visits each of 25 or 30 customers in this State every other month. The salesman represents the Appellant by handling complaints, advertising products, and soliciting business. In almost all cases, the customer mails the purchase order to Appellant's office, in West Virginia. In some cases, the order is given to the salesman to transmit.

Respondent considered Appellant to be subject to the corporation income tax, computed the income derived from California-sources by applying to the combined income of Appellant and Harding an allocation formula composed of the factors of property, payroll and sales, and included in the numerator of the sales factor all sales to California customers. Notices of the assessments in question were then mailed to Appellant. In 1955, Appellant paid the assessments. Thereafter it filed claims for refund which were denied by the Franchise Tax Board,

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Appellant contends that it is constitutionally exempt from the corporation income tax, that Respondent erred in combining Harding's income with Appellant's income and that all or most of its sales to California customers should be excluded from the numerator of the sales factor.

Appellant's contention that it is exempt from the corporation income tax by reason of the commerce and due process clauses of the United States Constitution must be rejected. (Appeal of Dr. Posner Shoe Co., Inc., this day decided.) In the determination of this matter, we have taken into consideration Public Law 86-272, a Federal act which places certain limitations upon the power of a state to tax income derived from interstate commerce. By its terms, the act does not apply to taxes collected prior to its effective date, September 14, 1959. Since the tax here in question was collected well before September 14, 1959, the Federal legislation is without application in this appeal.

In Edison California Stores, Inc. v. McColgan, 30 Cal. 2d 472, it was held that the tax of a corporation doing business in California could be computed on the basis of an allocation formula applied to the combined income of that corporation, its parent corporation and other subsidiaries of the parent. The court said that such method is authorized whenever a unitary business is operated partially within and partially without the state, whether the integral parts of the system are or are not separately incorporated. As indicated by the court, a unitary business exists where one part of the business contributes to or depends upon the other parts.

-A-business of manufacturing and selling a product is a classic example of a unitary business. Thus the manufacturing department depends upon and contributes to the selling department and the selling department in turn depends upon and contributes to the manufacturing department. Accordingly, we hold that the activities of Appellant and Harding constitute a unitary business and that Respondent was correct in combining Harding's income with Appellant's.

Appellant's final contention is that sales to California customers should not be imputed solely to the activities of its California salesman, but that most of the sales should be imputed to the goodwill and advertising of many years' standing which resulted in a large volume of sales to California customers before there was a California salesman.

Respondent, which has been delegated the authority to prescribe the allocation formula (El Dorado Oil Works v. McColgan, 34 Cal. 2d 731, app. dism. 340 U.S. 801, 885; Pacific Fruit Express Co. v. McColgan, 67 Cal. App. 2d 93),

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has adopted the rule that sales should be apportioned in accordance with the location of the selling activities of employees. (Reg. 24301, Title 18, California Administrative Code.) The purpose of the sales factor is to serve as a balance against the factors of property and payroll and sales should, so far-as possible, be apportioned to the state where the markets are found, from which the business is received, or where the customers are located. (Altman and Keesling, Allocation of Income in State Taxation 2d ed. 1950, pp. 126, 128.) Since the California salesman in this matter called on all of the California customers, both new and old, we believe that Respondent's apportionment of the sales was proper. Its approach was in accord with applicable regulations and with the purpose of the sales factor.

O R D E R

Pursuant to the views expressed in the Opinion of the Board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to Section 26077 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claims of Fourco Glass Company for refund of corporation income tax in the amounts of \$135.72, \$295.27, \$1,034.26, \$208.27, \$712.12 and \$604.83 for the fiscal years ended June 30, 1949, 1950, 1951, 1952, 1953 and 1954, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 20th day of April, 1960, by the State Board of Equalization,

John W. Lynch, Chairman

Richard Nevins, Member

George R. Reilly, Member

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ATTEST: Dixwell L. Pierce, Secretary